



James City County Purchasing Office
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Williamsburg, VA 23187-8784
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Kitty.Hall@jamescitycountyva.gov
<http://www.jamescitycountyva.gov/purchasing/index.html>

**JAMES CITY COUNTY, VIRGINIA
SEALED REQUEST FOR PROPOSALS
14-6618**

Title: Energy Management Software Services

Issue Date: June 13, 2014

Non-Mandatory

Pre-Proposal Conference: June 23, 2014 at 9:00 am, James City County Government Center, Bld. F.-
Information Technologies Conference Room, 101-F Mounts Bay Road, Williamsburg VA 23185

Due Date: July 14, 2014, 2PM, local time at the Purchasing Office

Submit: Original and five (5) copies, Return this signed Cover Sheet

Inquiries: Kitty Hall, VCO, Purchasing Director, (757) 253-6644
Kitty.Hall@jamescitycountyva.gov

Questions must be submitted in writing via fax (757-253-6753), or email:
kitty.hall@jamescitycountyva.gov Attn: Kitty- no later than 2:00pm, July 3, 2014

This public body does not discriminate against faith-based organizations.

In compliance with this Request for Proposals and subject to all the conditions thereof, the undersigned offers to furnish the goods/services requested and certifies he/she has read, understands, and agrees to all terms, conditions and requirements of this proposal and is authorized to contract on behalf of the firm named below. By my signature on this solicitation, I certify that this firm/individual is properly licensed for providing the goods/services specified.

The Undersigned certifies that he (they) are the only person (persons) interested in said project and that it is made without connection with other persons submitting a proposal on the same scope of services; that the proposal is made without collusion, fraud, or reservation; that no official or employee of the Owner is directly or indirectly interested in said proposal, or any portion thereof.

PROPRIETARY INFORMATION YES () NO ()

Trade secrets or proprietary information is hereby submitted and identified. Reasons for protection and exclusion from the Virginia Freedom of Information Act (2.2 et seq.) is set forth below. (Additional sheet may be added if necessary.)

Offerors should indicate on the Cover Sheet the portions of their proposal that are proprietary. Please list the page numbers and the reason(s). **Do not mark the whole proposal proprietary. If Proprietary information is stated, Offerors shall submit One (1) Original and One (1) Redacted copy (removing any proprietary data or material.** Clearly identify on the Cover Sheet the “Original” and “Redacted” copy, as “Redacted Copy of Original Proposal” RFP# 14-6618

Company Name:_____

Contractor License#_____Type:_____

*State Corporation Commission ID #_____

Address:_____

City/State/Zip:_____

Telephone:_____FAX:_____

Email Address:_____

Federal Tax ID:_____

Print Name:_____Title:_____

Signature_____Date_____

Acknowledgement of Addendums: #1_____#2_____

***State Corporation Commission Requirement per the Virginia Public Procurement Act, VPPA:**

§ 2.2-4311.2. Compliance with state law; foreign and domestic businesses authorized to transact business in the Commonwealth. -- A. All public bodies shall include in every written contract a provision that a contractor organized as a stock or nonstock corporation, limited liability company, business trust, or limited partnership or registered as a registered limited liability partnership shall be authorized to transact business in the Commonwealth as a domestic or foreign business entity if so required by Title 13.1 or Title 50 or as otherwise required by law.

B. Pursuant to competitive sealed bidding or competitive negotiation, all public bodies shall include in the solicitation a provision that requires a bidder or offeror organized or authorized to transact business in the Commonwealth pursuant to Title 13.1 or Title 50 to include in its bid or proposal the identification number issued to it by the State Corporation Commission. Any bidder or offeror that is not required to be authorized to transact business in the Commonwealth as a foreign business entity under Title 13.1 or Title 50 or as otherwise required by law shall include in its bid or proposal a statement describing why the bidder or offeror is not required to be so authorized.

C. Any bidder or offeror described in subsection B that fails to provide the required information shall not receive an award unless a waiver of this requirement and the administrative policies and procedures established to implement this section is granted by the Director of the Department of General Services or his designee or by the chief executive of a local governing body.

D. Any business entity described in subsection A that enters into a contract with a public body pursuant to this chapter shall not allow its existence to lapse or its certificate of authority or registration to transact business in the Commonwealth, if so required under Title 13.1 or Title 50, to be revoked or cancelled at any time during the term of the contract.

E. A public body may void any contract with a business entity if the business entity fails to remain in compliance with the provisions of this section.

***Virginia State Corporation Commission (“SCC”) registration information: The undersigned Offeror:**

☐ is a corporation or other business entity with the following SCC identification number: _____ **-OR-**

☐ is not a corporation, limited liability company, limited partnership, registered limited liability partnership, or business trust **-OR-**

☐ is an out-of-state business entity that does not regularly and continuously maintain as part of its ordinary and customary business any employees, agents, offices, facilities, or inventories in Virginia (not counting any employees or agents in Virginia who merely solicit orders that require acceptance outside Virginia before they become contracts, and not counting any incidental presence of the Offeror in Virginia that is needed in order to assemble, maintain, and repair goods in accordance with the contracts by which such goods were sold and shipped into Virginia from bidder’s out-of-state location) **-OR-**

☐ is an out-of-state business entity that is including with this bid an opinion of legal counsel which accurately and completely discloses the undersigned Offeror’s current contacts with Virginia and describes why those contacts do not constitute the transaction of business in Virginia within the meaning of § 13.1-757 or other similar provisions in Titles 13.1 or 50 of the Code of Virginia.

****NOTE**** >> Check the following box if you have not completed any of the foregoing options but currently have pending before the SCC an application for authority to transact business in the Commonwealth of Virginia and wish to be considered for a waiver to allow you to submit the SCC identification number after the due date for proposals (the Commonwealth reserves the right to determine in its sole discretion whether to allow such waiver): ☐

SUBMIT ALL PAGES OF COVER SHEET WITH PROPOSAL

**JAMES CITY COUNTY
REQUEST FOR PROPOSALS
#14-6618
Energy Management Software System**

I. PURPOSE:

James City County, Virginia (“the County”) is soliciting proposals from qualified, interested parties to submit proposals for an Energy Management Software program designed specifically to collect, organize, report and manage energy data electronically.

The James City County Accounting Department processes approximately 150 invoices on a monthly basis for natural gas, propane and electric power with a total FY2014 utility cost of over \$2,000,000. The General Services Department is engaged in a multi-year effort to actively manage 244 energy meters in all structures and facilities operated by James City County. In order to effectively respond to energy usage anomalies it is imperative that the county has an automated system in place that is able to accurately track and report energy usage as soon as the invoices are available. In-house energy management software will also allow the county to account for all variables that affect usage in the broad range of facilities managed by the County. Accurate measurement will provide ability for the county to better evaluate its energy management program and continue enhancing efficiencies in county practices.

II. BACKGROUND:

James City County, Virginia is community of 180 square miles, land and water, and roughly 72,000 citizens.

Currently, the county is using several different methods to track, measure and report energy usage information. The goal of issuing this Request For Proposals is to establish a contract with a qualified firm that will assist the county in streamlining data entry and establishing a consistent tracking and reporting protocol. The county seeks a comprehensive software program. The county has identified requirements that outline specific needs (**ATTACHMENT A**). The Excel spreadsheet is included for offeror firms to identify if the specified requirements are part of the base product solution, or are a custom feature, and a “notes” section for additional information.

III. GENERAL SUBMITTAL GUIDELINES

- a. **Submission of Proposals**
Before submitting a proposal, read the ENTIRE solicitation including the Contract Terms and Conditions. Failure to read any part shall not relieve the Contractor of its contractual obligations. The proposal container must be completely and properly identified. The face of the container shall indicate the RFP number, time and date of acceptance, the title of the RFP. Proposals must be received by the Purchasing Department **no later than 2:00 pm on July 14, 2014**. Proposals may either be mailed or hand delivered to James City County-Purchasing Office, 101-F Mounts Bay Road, Suite 300, Williamsburg VA 23185. Faxed and e-mailed proposals will NOT be accepted.
- b. **Questions and Inquiries**
Questions and inquiries, submitted in writing, will be accepted from any and all offerors. The Purchasing Department is the sole point of contact for this solicitation unless otherwise instructed herein. Unauthorized contact with other County staff or County consultants regarding the RFP may result in the disqualification of the offeror. Material questions will be answered in writing with an Addendum. **Deadline for questions to be submitted in writing to the Purchasing Office is 2:00 pm on July 3, 2014**. It is the responsibility of all offerors to ensure that they have received all addendums. Addendums can be downloaded from <http://www.jamescitycountyva.gov/purchasing/index.html>.
- c. **Proprietary Information**
Trade secrets or proprietary information submitted by an offeror in connection with this solicitation shall not be subject to disclosure under the Virginia Freedom of Information Act; however, pursuant to Section

2.2-4342 of the Code of Virginia, the offeror must invoke the protections of this section prior to or upon submission of the data or other materials, and must clearly identify the data or other materials to be protected and state the reasons why protection is necessary. Failure to abide by this procedure may result in disclosure of the offeror's information. Offerors shall not mark sections of their proposal as proprietary if they are to be part of the award of the contract and are of a "Material" nature.

d. Authority to Transact Business in Virginia

Any foreign corporation, LLC, or LLP transacting business in Virginia shall secure a certificate of authority from or register with the State Corporation Commission (SCC), as required by Sections 13.1-757, 13.1-1051 or 50-73.138 of the Code of Virginia. The SCC may be reached at (804) 371-9733 or at <http://www.scc.virginia.gov/division/clk/diracc.htm>. Certain isolated transactions or sales conducted through independent Contractors may not require a certificate of authority. Bidders should consult the Code of Virginia for more information.

e. Late Proposals

LATE proposals will be returned to offeror UNOPENED, if RFP number, acceptance date and offeror's return address is shown on the container.

f. Notice of Award

A Notice of Award will be posted on the County's website (<http://www.jamescitycountyva.gov/purchasing/index.html>) and on the bulletin board located in the James City County Purchasing Office, 101-F Mounts Bay Road, Williamsburg VA 23185

g. W-9 Form Required

Each offeror shall submit a completed W-9 form with their proposal. In the event of contract award, this information is required in order to issue purchase orders and payments to your firm. A copy of this form can be downloaded from <http://www.irs.gov/pub/irs-pdf/fw9.pdf>.

h. Guidelines - By virtue of submitting a proposal, offerors are acknowledging understanding and acceptance of the following:

- ❖ The County reserves the right to reject any or all proposals at the sole discretion of the County, as unacceptable. The County reserves the right to reconsider any proposal submitted at any phase of the procurement. It also reserves the right to meet with select offerors at any time to gather additional information. Furthermore, the County reserves the right to add or delete functionality (i.e., modules) up until the final contract signing.
- ❖ All third party software solutions proposed as part of this package are subject to the same guidelines of this RFP, unless otherwise stated.
- ❖ All offerors submitting proposals agree that their proposal is valid for a minimum of one (1) year after submission to the County. The County reserves the right to reject as unacceptable any offer that specifies less than one (1) year of acceptance time. Upon mutual agreement between the County and the offeror, the acceptance time for the offeror's proposal may be extended.
- ❖ Proposals should be limited to no more than 50 paginated (total front and back) pages for any product solution excluding required forms and attachments included in this RFP. Proposals should not include marketing or sales literature, white papers, or other superfluous materials not directly related to the requirements of this RFP.
- ❖ Determination of Responsibility
In addition to the minimum qualifying criteria of this RFP and any other criteria outlined in this RFP, the offeror has the burden of demonstrating affirmatively its responsibility in connection with this solicitation. The County reserves the right to consider an offeror non-responsible who has previously failed to perform properly or to complete, in a timely manner, contracts of a similar nature, or if investigation shows the offeror is unable to perform the requirements of the contract.

- ❖ An offeror may be requested at any time by the County to provide additional information, references, samples or any other documentation or other deemed necessary to determine product suitability.

- ❖ **Incurred Costs**

Offerors submitting proposals do so entirely at their expense. There is no expressed or implied obligation by the County to reimburse any individual or firm for any costs incurred in preparing or submitting proposals, for providing additional information when requested by the County or for participating in any selection interviews and contract negotiations. Furthermore, at their own cost, offeror finalists will be required to complete a detailed Statement of Work that will be part of the implementation contract before the contract is signed.

- ❖ **Retention of Material**

The County reserves the right to retain all proposals regardless of which response is selected. All proposals and accompanying documents become the property of the County.

- ❖ **Solicitation Availability and Contact with County Staff**

Offerors are specifically directed NOT to contact any County personnel or consultants, other than specified personnel identified in this RFP, for meetings, conferences or technical discussions that are related to the RFP. Unauthorized contact with any County personnel may be cause for rejection of the offeror's proposal. The decision to select a proposal is solely that of the County.

- ❖ **Verbal Explanations**

Verbal explanations or instructions given by a County employee to an offeror in regard to this solicitation will not be binding on the County. Any information given to an offeror in response to a request will be furnished to all offerors as an addendum to this solicitation, if the County deems this information necessary for the preparation of proposals, or if the lack of the information would be detrimental to uninformed offerors. Only an addendum issued by the James City County Purchasing Office will be considered to be binding on the County.

- ❖ **Cooperative Procurement**

As authorized in Section 2.2-4304 of the Code of Virginia this procurement is being conducted on behalf of and may be used by public bodies, agencies, institutions and localities of the several states, territories of the United States, and the District of Columbia with the consent of the Contractor.

IV. Statement of Needs:

The successful offeror will be responsible for providing the County with an Energy Management Software program that will allow the conversion of a massive amount of billing data received each month into useful information. Services should include, but not be limited to, providing the software, partnering with County personnel to perform the installation of the software and in mapping data exchange, providing on-site and web-based training, and providing on-going maintenance and support.

SPECIFICATIONS/SOFTWARE/HARDWARE

It is the desire of the County that the software proposed be available off-the-shelf with features that are integrated into a single comprehensive energy information software package. Proposed software should be offered for local, in-house hosting, data entry and bill processing as well as optional internet-based data entry, editing and analysis. If hosted onsite the minimum technical requirement is Windows 2008 R2 and SQL 2008 but the preferred requirements are Windows 2012 and SQL 2012.

Proposals should address the ability of their software solution to perform the following functions on a point-by point basis, clearly addressing each function within the features and identifying the method in which the feature/function is engaged (**SEE Attachment A-Requirements**):

Hardware

Offerors should provide detailed, minimum specifications of servers and desktop workstations required to operate the proposed software.

It is the desire of the County that short-listed offerors possess the ability to provide a web-based demonstration of its proposed software for a period of time, to be mutually agreed to by both parties, at no charge to the County, prior to award of a contract.

❖ **Training and Seminars**

On-site training and/or web based training may be required. Topics to be covered will be determined at the time training is scheduled. Offerors should provide a proposed fee based on a recommended, on-site, training day, and web-based training day. Offerors should indicate any opportunity for County representatives to attend energy management seminars held at various sites throughout the year sponsored by the firm.

❖ **Maintenance and Support**

Offerors are requested to include in the proposal details and costs associated with providing a maintenance and support program immediately following final acceptance of the software system by the County. Final acceptance shall occur at the time following installation, mapping data exchange, and training, and acceptance by the County that it is satisfied that the software will meet its objectives.

❖ **License**

Offerors should include a copy of the software license agreement that the City would be required to sign, including associated cost.

VI. CONTRACT PERIOD AND RENEWAL:

The period of this contract shall be from date of award through July 30, 2015. The County reserves the right to renew this contract for up to five (5) years, one year at a time or any combination equal to five years.

Automatic contract renewals are prohibited. Contract renewals must be authorized by and coordinated through the County's purchasing department. Any contract renewal shall be on satisfactory contractor performance and if agreeable to all parties.

The obligation of the County to pay compensation due to the contractor under the contract or any other payment obligation under any contract awarded pursuant to this Request for Proposal is subject to appropriations by the James City County Board of Supervisors to satisfy payment of such obligations. The County's obligations to make payments during subsequent fiscal years are dependent upon the same action. If such an appropriation is not made for any fiscal year, the contract shall terminate effective at the end of the fiscal year for which funds were appropriated and the County will not be obligated to make any payments under the contract beyond the amount appropriated for payment obligations under the contract. The County will provide the contractor with written notice of non-appropriation of funds within thirty (30) calendar days after action is completed by the Board of Supervisors. However, the County's failure to provide such notice will not extend the contract unto a fiscal year in which sufficient funds have not been appropriated.

VII. PROPOSAL PREPARATION AND SUBMISSION

Interested parties are invited to respond to this RFP by submitting a proposal to the County. Proposals should include Name of Offeror submitting proposal; main office address; when organized; if a corporation, when and where incorporated; appropriate Federal, State, and County registration numbers. In addition to all other information required to address the requirements set forth in this RFP, offerors should include a complete detailed history of their firm including documentation of financial rating through A. M. Best, Standard and Poor's, or similar organization. Sealed proposals are due in the Purchasing Office no later than 2:00 pm on July 14, 2014.

Offerors are requested to provide a concise and focused response to this RFP including the following:

- a. Statement and discussion of the requirements as they are analyzed by the Offeror;
- b. Detailed outline for executing the requirements and achieving project objectives;

- c. Narrative fully and completely describing the energy management software system proposed and the approach/methodology proposed by the Offeror in providing these needed services.
- d. Completion of Pricing Proposal Form (ATTACHED)
- e. Sample Documents: Offerors should include sample copies of the following documents:
 - ☐ Sample software licensing agreement
 - ☐ Sample maintenance agreement
 - ☐ Sample implementation services agreement if applicable
 - ☐ Sample standard reports
 - ☐ Sample design documents
 - ☐ Sample documentation (user guides, training materials, etc.)
- f. Preliminary Work Plan
- g. The Offeror shall describe in detail the startup plan, and include the time needed for an implementation period.
- h. Security and Disaster Recovery Plan:
Contractor must provide a copy of its security and disaster recovery plan.

*Offeror may describe any services provided by the offeror that are not covered by the RFP, but would assist the County in enhancing its services. Include examples of these services.

❖ DETAILED SUBMITTAL REQUIREMENTS

Proposal Format

Proposers will return the Appendix A-Excel Sheet, completed acknowledging “yes” or “No” answers to each item listed, and any comments regarding those answers in a separate column on the spreadsheet. The Completed Excel Sheet must be returned via electronic media in EXCEL format, in addition to the sealed original and four (4) copies submissions required.

Introductory Material

The Title Page should show the RFP number, subject, and name of the offeror, address, telephone number, fax number, e-mail address, and date. In the Letter of Transmittal, offerors should include the names of the persons who will be authorized to make representations for the offeror, their titles, addresses, telephone numbers, and e-mail addresses. The letter should identify the primary engagement contact for the software firm, the contact for the implementation services firm if different, and the contact for any third-party software being proposed. Contact information should include a valid e-mail address and a toll-free telephone number. The Table of Contents should include a clear identification of the material by section and by page number.

Executive Summary

This part of the response to the RFP should be limited to a brief narrative summarizing the offeror’s proposal. The summary should contain as little technical jargon as possible and should be oriented toward non-technical personnel. This section should include price quotations at a summary level only, for software and services totals at most.

Statement of Needs

This section of the offeror’s proposal should include a general discussion of the offeror’s overall understanding of the project and the work proposed.

Company Background

Each offeror should provide required information about the submitting (software solution) offeror’s company,, and any third-party firm so that the County can evaluate the offeror’s and its proposed partner’s stability and capability to support the commitments set forth in response to the RFP. The County, at its sole discretion, may require the offeror to provide additional support and/or clarify requested information about the offeror, and any third-party firm.

Proposed Application Software and Computing Environment

The offeror should present, in detail, features and capabilities of the proposed software.

Third-Party Products/Optional Software

For product solution proposed on, the offeror should clearly identify any third-party products that are part of the proposed solution to the County. For each third-party product there should be a statement about whether the offeror's contract will encompass the third-party product and/or whether the County will have to contract separately with the third-party firm for the product. The successful offeror shall be responsible for the implementation and the satisfactory performance of any third party software included in the offeror's proposal. A proposal should describe any products, features or other value-added components recommended for use with the proposed system that have not been specifically requested in this RFP. The offeror should also provide proof that it has access to the third-party software source code (owned or in escrow) and that the offeror has the ability to provide long-term support for the third-party software components of its system. Consideration of these products, features, or other value-added components will be given where they may be of value to the County.

VIII. EVALUATION CRITERIA

The proposal will be evaluated on the following criteria: (Total Possible Points: 150)

- 1. Total software capability to provide required features. (30 points)**
- 2. Product support and commitment to service, including warranties, depth of resources available to provide upgrades and continuous maintenance support. (25 points)**
- 3. Training support. (20 points)**
- 4. Experiences and references indicating firm's ability to configure and install software projects of a similar nature on schedule and within budget. (25 points)**
- 5. Price. (25 points)**
- 6. Project completion time. (25 points)**

Demonstrations of the software application with 'real-time' operation and interviews may be required during the evaluation process.

This solicitation is a sealed Request for Proposals. Proposals shall be evaluated by representatives of the General Services, IT and Accounting Departments. Selection shall be made of the offeror(s) deemed to be most fully qualified and best suited among those submitting proposals, on the basis of the Evaluation Criteria listed above. Negotiations shall be conducted with the selected offeror(s) and an award shall be made to the offeror(s) that has made the best proposal. Should the Owner determine in writing and in its sole discretion that only one offeror is fully qualified, or that one offeror is clearly more highly qualified and suitable than the others under consideration, a contract may be negotiated and awarded to that offeror.

References may be contacted at the discretion of the county. Typically, only references of those offerors that receive high rankings are contacted. The County reserves the right to contact entities/firms other than those listed or in addition to those furnished in the offeror's proposal. The offeror shall furnish the county all such information and data as may be requested for this purpose.

IX. Insurance Requirements

INSURANCE

1. By signing and submitting a proposal under this solicitation, the proposer/offeror certifies that if awarded the contract, will have the insurance coverage's at the time the contract is awarded. If subcontractor is involved, the subcontractor will have workers compensation insurance in accordance with Sections 43-2.2-4332 and 65.2-800 et seq. of the Code of Virginia.

The offeror further certifies that the contractor and any subcontractors will maintain these insurance coverages during the entire term of the contract and that all insurance coverages will be provided by

insurance companies authorized to sell insurance in Virginia by the Virginia State Corporation Commission.

A. Workers Compensation and Employers Liability

Coverage A - Statutory

Coverage B - \$100,000/\$100,000/\$500,000

A broad form of all states endorsement should be attached.

B. Commercial General Liability Including Contractual and Completed Operations.

Limit of Liability \$1,000,000 Per Occurrence

C. Commercial Auto Liability Including Hired and Non-Owned Car Liability Coverage

Limit of Liability \$1,000,000 Per Occurrence

The Contractor shall purchase and maintain during the life of this Contract such commercial automobile liability insurance including employer's non-ownership liability and hired car liability insurance to protect him and any subcontractors performing work covered by this Contract from claims for damages, whether such operations be by him or any subcontractor, or by anyone directly or indirectly employed by either of them.

D. Excess Liability

Contractors have the option of meeting the insurance requirements of A, B and C above with a single primary policy or by providing evidence of an excess policy that, in addition to the primary policy, provides the coverage and meets the limit requirements of the coverage as specified in A, B, and C.

E. Self Insured Retentions, Deductibles and Aggregate Limits

All self insured retentions, deductibles and aggregate limits on any required insurance must be disclosed and approved by the James City County Risk Management Director.

F. "Claims Made" Policies

If the liability insurance purchased by the Contractor has been issued on a "claims made" basis, the Contractor must comply with the following additional conditions. The limits of liability and the extensions to be included as described previously in these provisions, remain the same.

The Contractor must either:

- 1) Agree to provide certificates of insurance evidencing the above coverage for a period of three (3) years after final payment under the Agreement for General Liability policies. This certificate shall evidence a "retroactive date" no later than the beginning of the Contractor's work under this Agreement, or
 - 2) Purchase the extended reporting period endorsement for the policy or policies in force during the term of this Agreement and evidence the purchase of this extended reporting period endorsement by means of a certificate of insurance or a copy of the endorsement itself.
2. The Contractor shall file with the Owner, as herein before required, satisfactory proof of acceptable insurance coverage. Such proof shall, unless otherwise required by the Owner, consist of the following:
 - A. Certificates of insurance on the insurance carrier's standard form indicating all policies required by law and the Contract documents. Certificates of insurance shall be furnished in a number of copies equal to the number of counterparts of the Contract documents executed. Contractor shall notify Owner immediately if Contractor receives notification of non-renewal or cancellation.
3. James City County shall be named as an Additional Insured on the Commercial General Liability per ISO 2010 on a primary basis. James City County's or James City Service Authority's Commercial

General Liability shall not contribute in any loss payment insured under the Contractor's Commercial General Liability policy.

- A. All certificates must comply with the provisions of Section 38.2-518 of the Code of Virginia, 1950, as amended

Hold Harmless/Indemnification:

The Contractor shall indemnify, defend and hold harmless the James City County and James City Service Authority from loss from all suits, actions, or claims of any kind brought as a consequence of any negligent act or omission by the Contractor. The Contractor agrees that this clause shall include claims involving infringement of patent or copyright. For purposes of this paragraph, "County", "Authority" and "Contractor" includes their employees, officials, agents and representatives. "Contractor" also includes subcontractors and suppliers to Contractor. The word "defend" means to provide legal counsel for the County/Authority or to reimburse the County/Authority for its attorneys' fees and costs related to the claim. This section shall survive the Contract. The County/Authority is prohibited from indemnifying Contractor and/or other third parties.

X. General Terms And Conditions (Attachment B)

XI. PROPRIETARY INFORMATION

Ownership of all data, materials and documentation originated and prepared for the County pursuant to this RFP shall belong exclusively to the Owners and be subject to public inspection in accordance with the Virginia Freedom of Information Act. Trade secrets or proprietary information submitted by an offeror shall not be publicly disclosed under the Virginia Freedom of Information Act; however, the offeror shall invoke the protection of this section prior to or upon submission of the data or other materials and must identify the data or other materials to be protected and state the reasons why protection is necessary. Disposition of material after award is made should be stated by the offeror. Offerors should indicate on the Cover Sheet the portions of their proposal that are proprietary. Please list the page numbers and the reason(s). Do not mark the whole proposal proprietary.

XII. POLICY REGARDING CONTACT AFTER PROPOSAL SUBMITTAL

No Offeror shall initiate or otherwise have contact related to the solicitation with any Owner representative or employee, other than the James City County Purchasing Office, after the date and time established for receipt of proposals. Any contact initiated by an Offeror with any Owner representative or employee, other than the Purchasing Office, concerning this solicitation is prohibited and may cause the disqualification of the Offeror from this procurement process.

Questions regarding this request for proposal may be directed to Kitty Hall, Purchasing Director at (757) 253-6644, email Kitty.Hall@jamescitycountyva.gov. All questions that are pertinent to the project will be answered in the form an addendum and posted on the Purchasing bulletin board and James City County website: <http://www.jamescitycountyva.gov/purchasing/index.html>

QUESTIONS MUST BE RECEIVED IN WRITING NO LATER THAN 2:00 PM, July 3, 2014.

XIII. Employment Discrimination by Contractors Prohibited

Every Contract of over \$10,000 shall include the following provisions:

- A. During the performance of this Contract, the Contractor agrees as follows:

1. The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, status as a service disabled veteran, or any other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the Contractor. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

2. The Contractor, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, shall state that such Contractor is an equal opportunity employer.

3. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient to meet this requirement.

B. The Contractor will include the provisions of the foregoing paragraphs, 1, 2, and 3 in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

XIV. Drug-free Workplace

Every Contract of over \$10,000 shall include the following provisions:

During the performance of this Contract, the Contractor agrees to (i) provide a drug-free workplace for the Contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying Employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or behalf of the Contractor that the Contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor. For the purposes of this section, "drug-free workplace" means a site for the performance of work done in connection with a specific Contract awarded to a Contractor in accordance with this chapter, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana during the performance of the Contract.

XV. Exemption from Taxes

Pursuant to Va. Code § 58.1-609.1, the County is exempt from Virginia State Sales or Use Taxes and Federal Excise Tax, therefore the Contractor shall not charge the County for Virginia State Sales or Use Taxes or Federal Excise Tax on the finished goods or products provided under the Contract. However, this exemption does not apply to the Contractor, and the Contractor shall be responsible for the payment of any sales, use, or excise tax it incurs in providing the goods required by the Contract, including, but not limited to, taxes on materials purchased by a Contractor for incorporation in or use on a construction project. Nothing in this section shall prohibit the Contractor from including its own sales tax expense in connection with the Contract in its Contract price.

XVI. Ownership of Information

All work products and information pertaining to records, property, financial, or other information acquired under the scope of this Contract shall be strictly confidential and shall be considered works for hire and become the property of the County. Any such works will not be stamped with the Contractors' proprietary marking. The Contractor shall return all information to the County upon termination, and/or request and shall not utilize any of the information for purposes outside of the scope of this Contract or without express approval of the County.

All copyright and patent rights to all papers, reports, forms, materials, creations, or inventions created or developed in the performance of this Contract shall become the sole property of the County. On request, the Contractor shall promptly provide an acknowledgment or assignment in a tangible form satisfactory to the County to evidence the

County's sole ownership of specifically identified intellectual property created or developed in the performance of the Contract.

The selected software offeror shall provide their proposed systems' source code and software documentation, this also includes source code and documentation for all third-party proposed products to the County, or establish an escrow account with the exact version of the source code, software documentation and third-party source code and documentation being implemented by the County within thirty (30) days of execution and effective date of the Contract. The selected software offeror must provide to the County, or escrow, the original, unaltered code, and software documentation which must be replaced with the as-built code subsequent to completing the a) testing, b) acceptance and c) implementation phases of this project. The selected software offeror shall notify the County every time code versions are sent to escrow. This is required to ensure that the County has unrestricted access to use of the source code and software documentation in the event the selected software offeror ceases to exist, ceases to support the application, or otherwise terminates its relationship and/or ownership to the product.

XVII. Audit

The Contractor shall maintain books, records and documents of all costs and data in support of the services provided. James City County or its authorized representative shall have the right to audit the books, records and documents of the Contractor under the following conditions:

a) If the contract is terminated for any reason in accordance with the provisions of these contract documents in order to arrive at equitable termination costs; b) In the event of a disagreement between the Contractor and the County on the amount due the Contractor under the terms of this contract; c)

To check or substantiate any amounts invoiced or paid which are required to reflect the costs of services, or the Contractor's efficiency or effectiveness under this contract; and, d) If it becomes necessary to determine the County's rights and the Contractor's obligations under the Contract or to ascertain facts relative to any claim against the Contractor that may result in a charge against the County.

These provisions for an audit shall give the County unlimited access during normal working hours to the Contractor's books and records under the conditions stated above.

Unless otherwise provided by applicable statute, the Contractor, from the effective date of final payment or termination hereunder, shall preserve and make available to the County for a period of three (3) years thereafter, at all reasonable times at the office of the Contractor but without direct charge to the County, all its books, records documents and other evidence bearing on the costs and expenses of the services relating to the work hereunder.

The County's right to audit and the preservation of records shall terminate at the end of three (3) years as stated herein. The Contractor shall include this "Right of Audit and Preservation of Records" clause in all subcontracts issued by it and they shall require same to be inserted by all lower tier subcontractors in their subcontracts, for any portion of the work.

Should the Contractor fail to include this clause in any such contract or lower tier contract, or otherwise fail to insure the County's rights hereunder, the Contractor shall be liable to the County for all reasonable costs, expenses and attorney's fees which the County may have to incur in order to obtain an audit or inspection of or the restoration of records which would have otherwise been available to the County from said persons under this clause. Such audit may be conducted by the County or its authorized representative.

XVIII. Warranty of Services

System Software Solution Performance Warranty

Contractor represents and warrants that the system software solution provided under this Contract will: (i) meet the acceptance or completion criteria as set forth in the Statement of Work, the design document and/or any change order; (ii) be free from all material defects; and (iii) perform in accordance with the requirements set forth in the Statement of Work, the design document and/or any change orders, for a minimum of twenty-four (24) months following final acceptance of the System by the County.

A. System Integration Warranty

Contractor represents and warrants that, for a minimum of twenty-four (24) months following final acceptance of the System by the County, all Contractor-provided and/or third-party equipment and/or software installed under this Contract, including all components thereof, (i) is compatible and will operate with one another and with the County's hardware, software, and network environment as exists at [pre-defined milestone or date], (ii) shall function properly as a fully integrated and implemented system, and (iii) when operated together will not cause any material delays, defects, or problems with the system software solution System. The parties acknowledge that, under the provisions of this Warranty, in the event that the implementation of one component causes errors in another software component(s), the Contractor shall be obligated, at no additional cost to the County, to remedy the error in one or all components, as the case may be, regardless of whether or not the latter component's warranty period may have expired.

B. Component Services, Software and Equipment Warranties

The Contractor warrants that all services performed and software and equipment provided under this Contract to meet each milestone will at the time of the County's acceptance of each milestone be free from defects in workmanship and conform to the requirements of this Contract and that they will remain so through final acceptance of the System by the County, and for a period of twenty-four (24) months following final acceptance of the System by the County. To the extent software, equipment and services will be provided by entities other than the Contractor, the Contractor shall require third party warranties to conform to this provision and pass through all warranties to the County if said warranties will continue beyond the expiration date of this Contract. Contractor will provide the County with a written list of all third-party IP or products and related warranties that Contractor plans to provide or use as part of the systems software solution.

C. Software Warranties

The Contractor shall warrant that the contents of its proposal accurately reflect the software's capability to satisfy the requirements of this Contract's Statement of Work. In addition, the Contractor shall require software vendors to warrant that the software provided under this Contract will conform in all material respects to those requirements and to specifications stated in the software vendor's license. Said software warranties shall remain in place for minimum of twenty-four (24) months following final acceptance of the System by the County. In addition to the above and not as a limitation, Contractor provides the following warranties.

D. Third Party Agreements Warranty

Contractor represents and warrants that Contractor's performance does not and shall not violate any agreement or obligation between the Contractor and a third party.

E. Third Party Intellectual Property Rights Warranty

Contractor represents and warrants that any and all work, products, and/or services implemented pursuant to this Agreement and/or delivered to the County do not and will not infringe any Intellectual Property Right held by any third party.

F. Warranty Repairs

The County's remedy for a violation of any performance, product or integration warranty shall be as follows: If any services, software or equipment provided under the Contract fails during normal use, or fails to comply with the Contract's requirements, during the warranty period, the Contractor shall correct the failure at no cost to the County after written notice is received from the County. Corrections shall be undertaken in accordance with the table contained in each appendix for the system proposed on.. The County shall determine the severity level. If, after making all reasonable efforts, the Contractor is unable to correct the failure, the County shall be entitled to receive a refund equal to the amount paid for the services, software and/or equipment in question; provided, however, if the failure prevents the County from using the system software solution, in whole or substantial part, for its intended purpose, the County will be entitled to receive a refund equal to the entire amount paid for the said System, plus reasonable escalation. While the warranty periods are in effect, the Contractor shall maintain a log of all warranty issues and the resulting action. The Contractor shall submit a monthly report listing all warranty claims submitted during that calendar month as well as a short annotation describing the resulting action. Warranty issues shall be reported to the Contractor on a form provided by the County.

XIX. Invoicing and Payment

The Contractor shall submit invoices for review/approval of the Project Manager. Invoices shall be based upon completion of tasks or deliverables and shall include progress reports. The County will deduct an amount of fifteen percent (15%) retention on all milestone payments, with such retention being released only upon the County's final acceptance of the entire system. All such invoices will be paid promptly by the County unless any items thereon are questioned, in which event payment will be withheld pending verification of the amount claimed and the validity of the claim. The firm shall provide complete cooperation during any such investigation. All invoices shall be forwarded to the Project Manager for review and acceptance for payment. Upon receipt and verification of undisputed invoice, the County will render payment within thirty (30) days. Individual Contractors shall provide their social security numbers, and proprietorships, partnerships, and corporations shall provide their federal employer identification number on the pricing form.

XX. Assignment of Contract

The Contractor is prohibited from assigning, transferring, conveying, subletting, or otherwise disposing of this agreement or its rights, title or interest therein or its power to execute such agreement to any other person, company or corporation without the prior consent and approval in writing by the County.

XXI. Contract Price Adjustments

Prices quoted are firm for a period of three (3) years after the execution of a Contract by the County. The County will consider only one price adjustment annually after the initial three (3) year term. A request for price adjustment from the Contractor will not be approved unless the Contractor submits to the County sufficient justification and documentation to support the Contractor's request based on Contractor's increase in net costs in delivery of goods and services under the Contract. A request for any price adjustment may not be approved if it exceeds the lesser of five percent (5%) or the amount of the annual percentage change of the Consumer Price Index (CPI) for the twelve (12) month period immediately prior to the date of the request, based upon the CPI for all urban consumers issued for the Washington-Baltimore, DC-MD-VA-WV Metropolitan area, by the United States Department of Labor, Bureau of Labor Statistics for ALL ITEMS. A price adjustment may only be approved prospectively by a written Contract change order executed by the Purchasing Office.

**James City County
General Services
Energy Information Software
Request For Proposals**

10 points= Required, 5 points= Preferred, 1 point= Optional

	Features	Priority	Base System	Custom	Notes*
	BT - Bill Tracking				
BT0001	Track all types of energy usage (i.e. electric, natural gas, propane, fuel, solar, etc...)	Required			
BT0002	Track any level of bill details (i.e. taxes, various charges, KW demand)	Required			
BT0003	Energy usage is automatically loaded into software within 3 days of receipt of invoice.	Required			
BT0004	User-defined work flow process for supervisor approval of bills	Required			
BT0005	"Fat finger" tests to catch obvious keying errors.	Required			
BT0006	Errors associated with the automated bill entry methodology are immediately flagged and easily corrected	Required			
BT0007	Simple or complex formulas to split usage and costs in shared facilities using Virtual Meters: example: Split electric bill to two agencies 60%-40%	Required			
BT0008	Provisions for complex unbundled/deregulated accounts with multiple vendors	Required			
BT0009	Rate schedules can recreate and verify accuracy of bills, wizard to easily create simple to complex rate schedules	Required			
BT0010	Bill audits to spot potential problems	Required			
BT0011	Bill 'Batch Entry' with batch control totals	Required			
BT0012	Flexible interface with A/P systems; use System as a "smart" front-end to the bill payment process	Required			
BT0013	Ability to assign General Ledger (GL) to portions of each bill	Required			
BT0014	Flexible interface with the Fleet Management system; use System as a "smart" front-end to the bill payment process	Preferred			
BT0015	Scanned image of each bill can be retrieved and viewed	Required			
BT0016	System is capable of creating EDI820 payment files	Required			
BT0017	Imports and charts Interval Data (15-minute 'raw' data from large electric meters; data files are imported to System in CSV or other formats)	Required			

**James City County
General Services
Energy Information Software
Request For Proposals**

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BT0018	Budgets/Forecasts – Create multiple budgets by several variables including but not limited to cost, blended rate and consumption, rate change scenarios, weather and setpoint change scenarios and print reports.	Required			
BT0019	Sub meter Readings – establish reading routes, enter readings manually or via upload of data from metering systems	Required			
BT0020	Assign costs to sub meters and virtual meters via rate schedules	Required			
BT0021	EDI 810 bill entry – Electronic Data Interchange formats accepted, as well as CSV flat file for bill import	Required			
BT0022	Export Capabilities (Accounts Payable system and General Ledger account #)	Required			
BT0023	Accrual functions for month- and year-end accounting needs and Fiscal year date ranges	Required			
BT0024	All fields on the bill must be captured on one screen	Required			
BT0025	Track any type of utility bill (any commodity, energy or non-energy)	Preferred			
BT0026	Bill entry screen layout looks like actual bill	Preferred			
BT0027	Bill entry screen shows past history with tables and graphs	Preferred			
BT0028	Tenant and customer/reimbursable account billing using rate schedules	Optional			
	OS - Organizational Structure				
OS0001	Organizational Structure does not have to fit a predefined template. Database can easily be modified to any structural design variables including but not limited to region, department, division, unit, sites, etc. No limits on levels or complexity.	Required			
OS0002	Ability to add unlimited number of buildings, meters, accounts, vendors.	Required			
OS0003	“Treeview” interface to easily navigate within organization	Required			
OS0004	User-defined fields for building, meter, account, vendor data can link to external URLs	Required			
OS0005	Unlimited number of user-defined “groups” of meters or buildings for reporting	Required			

**James City County
General Services
Energy Information Software
Request For Proposals**

10 points= Required, 5 points= Preferred, 1 point= Optional

OS0006	Data importer allows new user to easily lay out entire structure (accounts, meters, buildings, etc.) in Excel and import to System.	Required			
OS0007	Facility-specific variables including but not limited to type of HVAC system, type of lighting, square footage, number of visitors, hours of operation, time of day, and number of employees can be associated with each meter account so that usage is easily compared across the organization.	Required			
	SA - Security & Access				
SA0001	Login requires username and strong password (Including upper/lower case, numbers, and special characters and minimum length)	Required			
SA0002	Variable levels of user access (view only, view & edit, etc.)	Required			
SA0003	User access can be limited to specific buildings, depts., meters, etc.	Required			
SA0004	No limit on number of users	Required			
SA0005	Data hosted onsite with minimal hardware and network integration requirements. (If this cannot be accommodated then SA0006 is required)	Required			
SA0006	Offsite hosting is available in a secure environment with backup (If this cannot be accommodated then SA0005 is Required)	Required			
SA0007	Security using Active Directory	Preferred			
SA0008	Data is owned by James City County and can be easily downloaded onto our own server at any time (including getting the data in database format)	Required			
	RP - Reports				
RP0001	Views – Instant charts, continuously updated, of cost, use, unit cost and current year vs. last year	Required			
RP0002	Charts, and graphs including but not limited to bill rate comparisons, budgeted vs. actual utility \$ based on monthly usage projections, departmental usage reports, ROI analysis for setpoint adjustments and energy efficiency upgrades.	Required			
RP0003	Ability to build custom reports and "link" them into the application using SSRS (Microsoft Reporting Services)	Required			

**James City County
General Services
Energy Information Software
Request For Proposals**

10 points= Required, 5 points= Preferred, 1 point= Optional

RP0004	On-going custom - report services are provided to the client	Required			
RP0005	System automates greenhouse gas tracking	Required			
RP0006	System generates user-friendly reports with charts, tables and graphs	Required			
RP0007	Reports are easily modified	Required			
RP0008	Reports are "presentation-ready"	Required			
RP0009	Ability to generate ROI information on energy upgrades	Required			
RP0010	Reports can be built and deployed by James City County	Preferred			
RP0011	Report settings can be saved as Favorites	Required			
RP0012	Many reports can be packaged into batches; one click runs many reports	Required			
RP0013	Flexible options for filtering report data	Required			
RP0014	Reports can be exported to many file formats (examples include but not limited to PDF, Excel, Word, Powerpoint, etc.)	Required			
RP0015	Reports can be directly emailed (no prior export required)	Required			
RP0016	Email report publisher automatically distributes reports to lists of recipients per your schedules and filter options. (examples include but not limited to hour, day, week, month, quarter, year, anomalies, min/max thresholds, # of employees, etc...)	Required			
RP0017	Special export formats designed specifically for Excel	Required			
RP0018	Reports use Crystal Reports engine	Optional			
RP0019	Crystal Reports, Access, or Excel can be used to design new reports	Optional			

**James City County
General Services
Energy Information Software
Request For Proposals**

10 points= Required, 5 points= Preferred, 1 point= Optional

RP0020	Energy supply contract tracking and administration	Preferred			
RP0021	System has capacity to separately track community energy use and greenhouse gas emissions measured by a different set of variables (i.e. VDOT miles travelled, energy use by sector, pounds of carbon emitted by landfills and sanitary sewer, etc...)	Required			
	DD - Deployment and Development				
DD0001	LAN client-server version using Microsoft SQL Server 2008 or later with virtualization.	Required			
DD0002	Web-based with browser client (Support IE 9 and newer)	Required			
DD0003	Web-based with browser clients including mobile and (Chrome, Firefox, Safari)	Preferred			
DD0004	Web-based with 'rich' Windows client (port 80, port 443, no ODBC)	Required			
DD0005	Company is available for questions via phone during EST business hours.	Required			
DD0006	Company's main business is publishing this software – at least 50% of annual company revenues are derived from licensing and supporting this application.	Required			
DD0007	Company track record in upgrading this software - At least one major software upgrade release per year	Required			
DD0008	Other government jurisdictions in Virginia successfully use system and are available for reference and peer review	Required			
	SF - Specialty Features				
SF0001	Weather normalization using tried and true degree day statistical techniques. Automatic daily download of weather data from AccuWeather.com or other agreed upon reliable historical weather data source	Required			
SF0002	Cost Avoidance – Measurement & verification of savings in accordance with the IPMVP protocol and U.S. Dept. of Energy and industry standards.	Required			

**James City County
General Services
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SF0003	Calendarization “smoothes out” utility bill usage and cost data by allocating them to the appropriate calendar month and fiscal quarters.	Required			
SF0004	Ability to set up fiscal calendars for reporting and Calendarization, etc.	Required			
SF0005	Set up building attributes, examples include (HVAC system, lighting, insulation, electronics, brick, wood siding, windows, etc.)	Required			
SF0006	Normalize energy consumption data to a user-selected baseline year for an “apples-to-apples” comparison across multiple years.	Required			
SF0007	Tools that graph normalized load profiles – benefits electric procurement process, helps ensure the best possible quotes/bids	Required			
SF0008	Rate/Tariff analysis compares your rates with alternative VEPGA rates	Required			
SF0009	Production tracking – occupancy, production, etc.	Required			
SF0010	Electric interval data features - import via CSV or MV-90 format, charting, analysis, application of rate schedule to range of dates	Required			
SF0011	Issue Tracking feature to easily track savings opportunities and problems	Required			
SF0012	Issue Tracking feature that can be assigned to any user	Required			
SF0013	Issue Tracking feature that can be used to track status and update building managers through auto generated emails	Required			
SF0014	Issue tracking feature that can tie anomalies to real-time behavior	Required			
SF0015	Greenhouse Gas emissions & Green Energy credits tracking & reporting; complete web-based library of conversion factors for CO2 equivalencies.	Required			

**James City County
General Services
Energy Information Software
Request For Proposals**

10 points= Required, 5 points= Preferred, 1 point= Optional

SF0016	ENERGY STAR benchmarking interface stores and distributes building attribute data to ENERGY STAR Portfolio Manager and receives energy efficiency ratings back.	Required			
SF0017	Project tracking – Report the energy and cost savings from your energy management projects	Required			
SF0018	Automated Energy Conversions of all fuel types into BTUs	Required			
SF0019	Flexible interface with work order system	Preferred			
SF0020	Can be used as a tracking system for energy upgrades and routine maintenance with track and sort functions for queries by energy conservation measure type	Preferred			
SF0021	Allows for utility vendor communications tracking and management	Preferred			
SF0022	Privately-labeled, free-to-use Web-based Energy Efficiency Application to promote and facilitate energy conservation among home and business owners within James City County	Preferred			

PRICING SCHEDULE

To assist the County in evaluating your proposal; proposed costs associated with this project should be listed in the following format:

A. Total Cost of Software Package. \$ _____

B. Training. \$ _____

C. License Agreement for first year. \$ _____

Total (A – C) \$ _____

D. Please indicate typical yearly increase in cost of License Agreement after first year.
_____ %

E. Maintenance and Support - List programs available, first year cost of each program, and typical yearly increase in cost of program after first year \$ _____

F. List Any Other Proposed Costs Which May Be Associated With Project: _____

JAMES CITY COUNTY

GENERAL TERMS & CONDITIONS AND INSTRUCTIONS TO BIDDERS

These CONDITIONS AND INSTRUCTIONS TO BIDDERS shall be binding on all bidders or offerors and are incorporated by reference in all contracts resulting from any written Request for Quotes, Invitation to Bid or Request for Proposals issued, collectively the ("Request"), to which they are attached. Use of the term "bid" in these General Terms & Conditions and Instructions to Bidders is not intended to be restricted to an Invitation to Bid and shall also affect written Request for Quotes, Invitation to Bid or Request for Proposals. The Purchasing Office is responsible for the purchasing activity of James City County, a political subdivision of the Commonwealth of Virginia, and the James City Service Authority, herein referred to collectively as "James City County" or "County". Bidder/Offeror or their authorized representatives are expected to inform themselves fully as to the conditions, requirements, and specifications before submitting bids/proposals: failure to do so will be at the bidder's/offeror's own risk and except as provided by law, relief cannot be secured on the plea of error.

Subject to all Federal, State and local laws, policies, resolutions, regulations, rules, limitations and legislation including the County Purchasing Policy and the County Purchasing Manual, bids/proposals on all solicitations issued by the Purchasing Office will bind bidders/ offerors to applicable conditions and requirements herein set forth unless otherwise specified in the solicitation.

Cooperative Purchasing--James City County issues this solicitation in accordance with Section 2.2-4304 of the Virginia Public Procurement Act and Chapter 1, Section 5 of the James City County Purchasing Policy, and on behalf of the members of the Southeastern Virginia Governmental Purchasing Cooperative (SVGPC), as well as other public bodies, governmental jurisdictions and school divisions.

Bidders/Offerors are advised that all resultant contracts will be extended, with the authorization of the bidder/offeror, to other public bodies, governmental jurisdictions and school divisions as may be interested. Should other entities decide to use the final contract, the contractor shall deal directly with that jurisdiction or political subdivision concerning the placement of orders, issuance of the purchase orders, contractual disputes, invoicing and payments. James City County acts only as the "Contracting Agent" for these jurisdictions and political subdivisions. Failure to extend a contract to any jurisdiction will have no effect on consideration of your bid or offer.

It is the responsibility of the contractor to notify the public bodies, jurisdictions and political subdivisions of the availability of the contract.

Each participating public body, jurisdiction and political subdivisions has the option of executing a separate contract with the contractor. Such contracts may contain general terms and conditions unique to those jurisdictions and political subdivisions. If, when preparing such a contract, the general terms and conditions of a jurisdiction are unacceptable to the contractor, the contractor may withdraw its extension of the award to that jurisdiction.

James City County shall not be held liable for any costs or damages incurred by another public body or jurisdiction as a result of any award extended to that public body, jurisdiction or political subdivision by the contractor.

SVGPC members reserve the right to make awards to the lowest responsive and responsible offeror during the contract term. SVGPC members not explicitly named in the IFB are not obligated to participate, nor is the successful offeror obligated to contract with other SVGPC members.

City of Chesapeake
City of Hampton
City of Newport News
City of Norfolk
City of Portsmouth
City of Virginia Beach
City of Williamsburg
County of Gloucester
County of James City
County of King William
Thomas Nelson Community College
Newport News Redevelopment & Housing
DDS Tidewater Regional Office
Revised 7/22/10

Newport News Public Schools
Williamsburg/James City County Public Schools
York County Public Schools
Christopher Newport University
College of William & Mary
Norfolk State University
Tidewater Community College
Jamestown/Yorktown Foundation
Southeastern Public Service Authority
County of York
Portsmouth Redevelopment & Housing
CAS Norfolk Regional Office

1. **AUTHORITY AND COOPERATIVE PURCHASING**-The County Purchasing Director has the sole responsibility and authority for negotiating, placing and when necessary modifying every solicitation, contract and purchase order issued by James City County. In the discharge of these responsibilities, the County Purchasing Director may be assisted by assigned buyers. Unless specifically delegated by the County Purchasing Director, no other County officer or employee is authorized to order supplies or services, enter into purchase negotiations or contracts, or in any way obligate the government of the County of James City for an indebtedness. Any purchase order or contract made which is contrary to these provisions and authorities shall be of no effect and void and the County shall not be bound thereby.
2. **COMPETITION INTENDED:** It is the County's intent that this solicitation permit competition. It shall be the Bidder's/Offeree's responsibility to advise the Purchasing Director in writing if any language, requirement, specification, etc., or any combination thereof, stifles competition or inadvertently restricts or limits the requirements stated in this solicitation to a single source. The Purchasing Director must receive such notification not later than five (5) business days prior to the deadline set for acceptance of the bids/proposals.

CONDITIONS OF BIDDING

3. **CLARIFICATION OF TERMS** - If any Bidder/Offeree has questions about the specifications or other solicitation documents, the prospective Bidder/ Offeree should contact the buyer whose name appears on the face of the solicitation no later than five (5) business days prior to the date set for the opening of bids or receipt of proposals. Any revisions to the solicitation will be made only by addendum issued by the buyer. Notifications regarding specifications may not be considered if received in less than five (5) business days of the date set for opening of bids/receipt of proposals.
4. **USE OF COUNTY FORM AND TERMS AND CONDITIONS:** Failure to submit a solicitation on the official James City County form provided for that purpose or unauthorized modification of or additions to any portion of the solicitation documents may be a cause for rejection of the bid/proposal if the price, quality, quantity, delivery, necessary assurances, performance of the contract and other factors deemed important to the solicitation will be affected. James City County reserves the right to decide, on a case-by-case basis, in its sole discretion, whether to reject any bid or proposal which has been modified. The County shall not be responsible for any errors or omissions of the bidder/proposer. The solicitation shall be signed by a representative authorized to legally bind the firm. By signing the solicitation, the bidder/offeree agrees to the terms and conditions of the solicitation and certifies that they have inspected the job site(s) and are aware of the conditions under which the work must be accomplished. Claims, as a result of failure to inspect the job site, shall not be considered by the County.

5. LATE BIDS/PROPOSALS & MODIFICATION OF BIDS/ PROPOSALS:

Any bid/proposal/modification received at the office designated in the solicitation after the exact time specified for receipt of the bid/proposal/modification is considered a late bid/proposal/ modification.

James City County is not responsible for delays in the delivery of the mail by the U.S. Postal Service, private carriers or the inter-office mail system. It is the sole responsibility of the Bidder/Offeree to ensure their bid/proposal reaches the Purchasing Office by the designated date and hour.

- a. The official time used in the receipt of bids/ proposals is that time stamped by the automatic time stamp machine in the Purchasing Office. Date/time stamps marked after the designated time of receipt will be rejected.

- b. Late bids/proposals/modifications will be returned to the Bidder/Offeree UNOPENED, if solicitation number, acceptance date and Bidder/Offeree's return address is shown on the container.
- c. If the County closes its offices due to inclement weather scheduled bid openings or receipt of proposals will be extended to the next business day, same time.
- d. Vendors may modify their bids prior to the date and time specified for the bid opening. Facsimile modification of bids shall not be accepted unless the solicitation allowed such submission.

6. WITHDRAWAL OF BIDS/PROPOSALS:

A bidder/offeree for a contract other than for public construction may request withdrawal of his or her bid/proposal under the following circumstances:

- a. Bids/Proposals may be withdrawn on written request from the Bidder/offeree received at the address shown in the solicitation prior to the time of acceptance.
- b. Requests for withdrawal of bids/proposals after opening of such bids/proposals but prior to award shall be transmitted to the County Purchasing Director, in writing, accompanied by full documentation supporting the request. If the request is based on a claim of error, documentation must show the basis of the error. Such documentation may take the form of supplier quotations, vendor work sheets, etc. If bid bonds were tendered with the bid, the County may exercise its right of collection.
- c. Bids/proposals shall not be withdrawn after award of a contract or issuance of a purchase order. No plea or claim of mistake in a solicitation or resulting contract or purchase order shall be available as a defense in any legal proceeding brought upon a contract or purchase order awarded to a bidder/offeree as a result of the breach or nonperformance of such contract or purchase order.

No Bid/Proposal may be withdrawn under this paragraph when the result would be the awarding of the contract on another Bid/Proposal of the same bidder/offeree or of another bidder/offeree in which the ownership of the withdrawing bidder/offeree is more than five percent. In the case of Invitation for Bids, if a bid is withdrawn under the authority of this paragraph, the lowest remaining bid shall be deemed to be the low bid. No bidder/offeree who is permitted to withdraw a bid/proposal shall, for compensation, supply any material or labor to or perform any subcontract or other work agreement for the person or firm to whom the contract is awarded or otherwise benefit, directly or indirectly, from the performance of the project for which the withdrawn bid/proposal was submitted.

7. **ERRORS IN BIDS/PROPOSALS** – When an error is made in extending total prices, the unit bid price will govern. Erasures in bids/proposals must be initialed by the bidder/offeree. Carelessness in quoting prices, or in preparation of bid/proposal otherwise, will not relieve the Bidder/Offeree of his responsibilities to provide the good or service. Bidders/Offerees are cautioned to recheck their bids/proposals for possible errors. Errors discovered after public opening cannot be corrected and the bidder will be required to perform if his or her bid is accepted.

8. **IDENTIFICATION OF BID/PROPOSAL ENVELOPE:** The signed bid/proposal and requested copies should be returned in a separate envelope or package, sealed and identified with the following information:

**ADDRESSED AS INDICATED ON PAGE 1
IFB/RFP NUMBER
TITLE
BID/PROPOSAL DUE DATE AND TIME**

**VENDOR NAME AND COMPLETE MAILING ADDRESS
(RETURN ADDRESS)**

If a bid/proposal is not addressed with the information as shown above, the Bidder/Offeror takes the risk that the envelope may be inadvertently opened and the information compromised, which may cause the bid/proposal to be disqualified. Bids/Proposals may be hand delivered to the designated location in the office issuing the solicitation. No other correspondence or other proposals should be placed in the envelope.

9. **ACCEPTANCE OF BIDS/PROPOSALS:** Unless otherwise specified, all formal bids/proposals submitted shall be valid for a minimum period of ninety (90) calendar days following the date established for acceptance. At the end of the ninety (90) calendar days the bid/proposal may be withdrawn at the written request of the Bidder/Offeror. If the proposal is not withdrawn at that time it remains in effect until an award is made or the solicitation is canceled.
10. **PRICING:**
- a. Bidder warrants by virtue of bidding that prices, terms, and conditions quoted in his bid will be firm for acceptance for a period of ninety (90) days from the date of bid opening unless otherwise stated by the County or Bidder.
 - b. Prices should be stated in units of quantity as specified in the bid form.
 - c. Life cycle cost analysis may be considered when determining the lowest responsive and responsible bid. This analysis may consider, in addition to purchase price, any proposed upward or downward escalator clauses proposed for the initial contract term and any potential renewal terms; operating and related costs over the life of the item including maintenance, down time, energy costs, salvage value, etc.
 - d. Bid prices shall be for complete installation ready for the County's use and shall include all applicable freight and installation charges; extra charges will not be allowed.
 - e. When an annual contract is not requested by the County, and the bid is for products or services to be delivered on a one-time only or staggered basis, only firm pricing shall be given consideration. General terms such as "price in effect at time of delivery" shall not be considered for award.
11. **CONDITIONAL BIDS:** Conditional bids are subject to rejection in whole or in part if the price, quality, quantity, delivery, necessary assurances, performance of the contract and other factors deemed important to the solicitation will be affected.
12. **OPENING:** At the time fixed for the opening of responses to a bid, all bids will be opened and the names of the bidders and the amount bid shall be read aloud and made readily available to the public.
- If a public opening of a Request for Proposals is held, only the names of the offerors will be read publicly.
13. **RESPONSE TO SOLICITATIONS:** In the event a vendor cannot submit a bid on a solicitation, the vendor is requested to return the solicitation cover sheet with an explanation as to why the vendor is unable to bid on these requirements. Because of the large number of firms listed on the County's Bidders List, it may be necessary to delete from this list the names of those persons, firms or corporations who fail to respond after having been invited to bid for three (3) successive solicitations. Such deletion will be made only after formal notification of the intent to remove the firm from the County's Bidder's List.
14. **BIDDER INTERESTED IN MORE THAN ONE BID:** If more than one bid is offered by any one party, either directly or by or in the name of his or her clerk, partner, or other persons, all such bids may be rejected. A party who has quoted prices on work,

materials, or supplies to a bidder is not thereby disqualified from quoting prices to other bidders or firms submitting a bid directly for the work, materials or supplies.

15. **TAX EXEMPTION:** The County is exempt from the payment of any federal excise or any Virginia sales tax. The price bid must be net, exclusive of taxes. Tax exemption certificates will be furnished if requested by the Bidder/Offeror.
16. **DEBARMENT STATUS:** By submitting their bids/proposals, Bidders/Offerors certify that they are not currently debarred by James City County, the Commonwealth of Virginia, the Federal Government, any local government or government agency/entity/authority from submitting bids or proposals on contracts for the type of goods and/or services covered by this solicitation, nor are they an agent of any person or entity that is currently so debarred.
17. **ETHICS IN PUBLIC CONTRACTING:** The provisions contained in Sections 2.2-4367 through 2.2-4377, Code of Virginia, as amended, shall be applicable to all contracts solicited or entered into by James City County. By submitting their bids/proposals, all Bidders/Offerors certify that their bids/proposals are made without collusion or fraud and that they have not offered or received any kickbacks or inducements from any other Bidder, Offeror, supplier, manufacturer or subcontractor in connection with their bid/proposal, and that they have not conferred on any public employee having official responsibility for this procurement transaction any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value was exchanged.
- The Bidder/Offeror certifies that to the best of his knowledge, no employee of the County, nor any member thereof, nor any public agency or official impacted by the solicitation or resulting contract has any pecuniary interest in the business of the Bidder/Offeror, and that no person associated with the Bidder/Offeror has any interest that would conflict in any manner with the performance of the contract resulting from this solicitation.
18. **PERFORMANCE BOND:** When requested in the bid, the County shall require the successful bidder to furnish a performance bond and labor and material payment bond with surety satisfactory to the County Attorney in the amount of the contract price at a time of or prior to execution of the contract.
19. **NO CONTACT POLICY:** No Bidder/Offeror shall initiate or otherwise have contact related to the solicitation with any County employee, other than the Purchasing Office, after the date and time established for receipt of bids/proposals. Any contact initiated by a Bidder/Offeror with any County representative, other than the Purchasing Office, concerning this solicitation is prohibited and may cause the disqualification of the Bidder/Offeror from this procurement process.
20. **LICENSES, PERMITS, AND FEES:** All bids submitted shall have included a list of any business and professional licenses, permits, or fees required by James City County or the Commonwealth of Virginia.

SPECIFICATIONS

21. **BRAND NAME OR EQUAL ITEMS:** Unless otherwise provided in the solicitation, the name of a certain brand, make or manufacturer does not restrict bidders to the specific brand, make or manufacturer named; it conveys the general style, type, character, and quality of the article desired, and any article which the County in its sole discretion determines to be the equal of that specified, considering quality, workmanship, economy of operation, and suitability for the purpose intended, shall be accepted. The Bidder is responsible to clearly and specifically indicate the product being offered and to provide sufficient descriptive literature, catalog cuts and technical detail to enable James City County to determine if the product offered meets the requirements of the solicitation. This is required even if offering the exact brand, make or manufacturer specified. Normally in

competitive sealed bidding, only the information furnished with the bid will be considered in the evaluation. Failure to furnish adequate data to enable James City County to determine if the product offered meets the requirements of the solicitation may result the bid being declared non-responsive. Unless the Bidder clearly indicates in its bid/proposal that the product offered is "equal" product, such bid/proposal will be considered to offer the brand name product referenced in the solicitation.

22. **FORMAL SPECIFICATIONS:** When a solicitation contains a specification which states no substitutes, no deviation therefrom will be permitted and the bidder will be required to furnish articles in conformity with that specification.
23. **OMISSIONS & DISCREPANCIES:** Any items or parts of any equipment listed in this solicitation which are not fully described or are omitted from such specification, and which are clearly necessary for the completion of such equipment and its appurtenances, shall be considered a part of such equipment although not directly specified or called for in the specifications.

The Bidder/Offeree shall abide by and comply with the true intent of the specifications and not take advantage of any unintentional error or omission, but shall fully complete every part as the true intent and meaning of the specifications and drawings. Whenever the mention is made of any articles, material or workmanship to be in accordance with laws, ordinances, building codes, underwriter's codes, A.S.T.M. regulations or similar expressions, the requirements of these laws, ordinances, etc., shall be construed as to the minimum requirements of these specifications.

24. **EQUIPMENT STANDARDS.** Any equipment delivered shall be standard new equipment, latest model, the best quality, and the highest grade work, except as otherwise specifically stated in bid. Any part of nominal appurtenances which are usually provided in the manufacturer's stock model shall be furnished.
25. **ANNUAL CONTRACT USAGE REQUIREMENTS:** Whenever a bid is sought seeking a source of supply for an annual contract for products or services, the quantities or usage shown are estimates only. No guarantee or warranty is given or implied by James City County as to the total amount that may not be purchased from any resulting contracts. These quantities are for Bidder's information only and will be used for tabulation and presentation of bid.

AWARD

26. **AWARD OR REJECTION OF BIDS:** The Purchasing Director shall award the contract to the lowest responsive and responsible bidder complying with all provisions of the IFB, provided the bid price is reasonable and it is in the best interest of the County to accept it. Awards made in response to a RFP will be made to the highest qualified offeror whose proposal is determined, in writing, to be the most advantageous to the County taking into consideration the evaluation factors set forth in the RFP. The Purchasing Director reserves the right to award a contract by individual items, in the aggregate, or in combination thereof, or to reject any or all bids/proposals and to waive any informality in bids/proposals received whenever such rejection or waiver is in the best interest of the County. Award may be made to as many bidders/offerors as deemed necessary to fulfill the anticipated requirements of James City County. The Purchasing Director reserves the right to negotiate with the lowest responsive, responsible bidder should bids exceed available funds. The Purchasing Director shall reject the bid if the bidder is deemed to be a non-responsive or non-responsive bidder.
27. **QUALIFICATIONS OF BIDDERS OR OFFERORS:** James City County may make such reasonable investigations as deemed proper and necessary to determine the ability of the Bidder/Offeree to perform the work/furnish the item(s) and the Bidder/Offeree shall furnish to James City County all such information and data for this purpose as may be requested. James City County reserves the right to inspect Bidder's/Offeree's physical facilities prior to award to satisfy questions regarding the

Bidder's/Offeree's capabilities. James City County further reserves the right to reject any bid or proposal if the evidence submitted by or investigations of, such Bidder/Offeree fails to satisfy James City County that such Bidder/Offeree is properly qualified to carry out the obligations of the contract and to complete the work/furnish the item(s) contemplated therein.

28. **TIE BIDS:** In the case of a tie bid, the County may give preference to goods, services and construction produced in the County or provided by persons, firms or corporations having principal places of business in the County. If such choice is not available, preference shall then be given to goods and services produced in the Commonwealth pursuant to Code of Virginia § 2.2-4324. If no County or Commonwealth choice is available, the tie shall be decided by lot.
29. **FACTORS OTHER THAN PRICE IN AWARD DECISION:** The following factors, in addition to price (as they apply), shall be a consideration in the award decision:
- The quality of performance/workmanship of previous contracts, services or products, or references which attest to other specific experiences;
 - The timely completion of previous contracts or services or the timely delivery of past orders; or references which attest to other specific experiences;
 - The sufficiency of financial resources and its impact on ability of the bidder to perform the contract or provide the services;
 - The County reserves the right to conduct on-site inspections of any bidder's facilities prior to award. The results of said inspection will be considered by the County in determining bidder's capabilities of successfully administering to this contract;
 - The ability and availability of the bidder to provide both quality and timely maintenance, service, and/or parts;
 - The resale value, life cycle costing, and value analysis of a product;
 - The availability and capability of local and regional vendor support as it affects the quantity, quality, and timeliness of the work or products required;
 - Delivery of a product and timely completion of a project as stated by vendor in bid;
 - Substantial compliance or noncompliance with specifications set forth in bid as determined by the County;
 - Product or parts inventory capability as it relates to a particular bid; and
 - Results of product testing.

CONTRACT PROVISIONS

30. **APPLICABLE LAW AND COURTS:** Any contract resulting from this solicitation shall be governed in any respects by the laws of Virginia, and any litigation with respect thereto shall be brought in the Circuit Court or General District Court of James City County, Virginia. The Contractor shall comply with applicable federal, state and local laws and regulations.
31. **IMMIGRATION REFORM AND CONTROL ACT OF 1986:** By entering into this contract, vendor certifies that it does not and will not during the performance of this contract knowingly employ an unauthorized alien as defined in, or otherwise violate the provisions of, the federal Immigration Reform and Control Act of 1986, as amended.
32. **OBLIGATIONS OF COUNTY AND CONTRACTOR:** County: The County shall furnish to the contractor all available

information as listed in the solicitation that may be useful for the contract work. The County shall assist the contractor in obtaining access to enter upon public and private property as required to perform the contract work. The County shall designate a representative who shall serve as the principal contact and give direction to the contractor throughout the duration of the contract. Contractor: The contractor represents that he has, or shall secure at his expense, all personnel, including subcontractors, required to perform and complete the Scope of Work.

33. **CONFIDENTIALITY AND OWNERSHIP OF DATA:** Any reports, information, intellectual property, data, drawings, specifications, estimates and summaries given to or prepared or assembled by the contractor under the Scope of Work of the contract, shall not be made available to any individual or organization by the contractor without prior written approval of the County. All of these items shall become the property of the County upon payment of fees as required by the contract.
34. **REPORTS OF WORK:** The County and the contractor shall schedule progress meetings at appropriate intervals throughout the duration of the contract. These meetings shall provide for the exchange of information related to the status of the Scope of Work, anticipated progress and any problems that have occurred.
35. **ANTI-TRUST:** By entering into a contract, the contractor conveys, sells, assigns, and transfers to James City County all rights, title and interest in and to all causes of the action it may now have or hereafter acquire under the antitrust law of the United States and James City County, relating to the particular goods or services purchased or acquired by James City County under said contract. Consistent and continued tie bidding could cause rejection of bids by the Purchasing Director and/or investigation for Anti-Trust violations.
36. **PAYMENT TERMS:** Unless otherwise provided in the solicitation payment will be made thirty (30) days after receipt of a proper invoice with complete supporting documentation, or thirty (30) days after receipt of all goods or acceptance of work, whichever is the latter. For construction projects, the County may retain five percent (5%) of the total amount of each partial progress payment to assure faithful performance of the contract by the contractor. The County will release all retainage upon final payment.
- Invoices for items/services ordered, delivered/performed and accepted shall be submitted by the Contractor directly to the payment address shown on the purchase order/contract. All invoices shall show the contract number, purchase order number, and any federal employer identification number.
 - Any payment terms requiring payment in less than 30 days will be regarded as requiring payment 30 days after invoice or delivery, whichever occurs last. This shall not affect offers of discounts for payment in less than 30 days, however.
 - The date of payment shall be deemed the date of postmark in all cases where payment is made by mail.
37. **PAYMENT TO SUBCONTRACTORS:** A contractor awarded a contract under this solicitation is hereby obligated:
- To pay the subcontractor(s) within seven (7) days of the contractor's receipt of payment from James City County for the proportionate share of the payment received for work performed by the subcontractor(s) under the contract; or
 - To notify James City County and the subcontractor(s), in writing, of the contractor's intention to withhold payment and the reason.

The contractor is obligated to pay the subcontractor(s) interest at the rate of one percent per month (unless otherwise provided under the terms of the contract) on all amounts owed by the contractor that remain unpaid seven (7) days following receipt of payment from James City County, except for amounts withheld as stated in b above. The date of mailing of any payment by U.S. Mail is deemed to be payment to the addressee. These

provisions apply to each sub-tier contractor performing under the primary contract. A contractor's obligation to pay an interest charge to a subcontractor may not be construed to be an obligation of James City County.

38. **ASSIGNMENT OF CONTRACT:** A contract shall not be assignable by the Contractor in whole or in part without the written consent of the Purchasing Director.
39. **DEFAULT:** In case of failure to deliver goods or services in accordance with the contract terms and conditions, James City County, after due oral or written notice, may procure them from other sources and hold the Contractor responsible for any resulting additional purchase and administrative costs. This remedy shall be in addition to another remedies which James City County may have.
40. **AVAILABILITY OF FUNDS:** It is understood and agreed between the contractor and the County herein that the County shall be bound hereunder only to the extent of the funds available or which hereafter become available for the purpose of the contract.
41. **ANTI-DISCRIMINATION:** By submitting their bids/proposals, Bidders/Offerors certify to James City County that they will conform to the provisions of the Federal Civil Rights Act of 1964, as amended, as well as the Virginia Fair Employment Act of 1975, as amended, where applicable, the Virginians With Disabilities Act, the Americans With Disabilities Act and the Code of Virginia § 2.2-4311, as amended. If the award is made to a faith-based organization, the organization shall not discriminate against any recipient of goods, services, or disbursements made pursuant to the contract on the basis of the recipient's religion, religious belief, refusal to participate in a religious practice, or on the basis of race, age, color, gender or national origin and shall be subject to the same rules as other organizations that contract with public bodies to account for the use of the funds provided; however, if the faith-based organization segregates public funds into separate accounts shall be subject to audit by the public body. (Code of Virginia § 2.2-4343.1.E).

In every contract over \$10,000 the provisions in a and b below apply:

- During the performance of this contract, the Contractor agrees as follows:
 - The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the contractor. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
 - The Contractor, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, will state that such Contractor is an equal opportunity employer.
 - Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this Section.
 - The Contractor will include the provisions of a. above in every subcontract or purchase order over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.
42. **NONDISCRIMINATION OF CONTRACTORS:** A bidder, offeror, or contractor shall not be discriminated against in the solicitations or award of this contract because of race, religion, color, sex,

national origin, age or disability or against faith-based organizations. If the award of this contract is made to a faith-based organization and an individual who applies for or receives goods, services, or disbursements provided pursuant to this contract objects to the religious character of the faith-based organization from which the individual receives or would receive the goods, services, or disbursements, James City County shall offer the individual, within a reasonable period of time after the date of his objection, access to equivalent goods, service, or disbursements from an alternative provider.

43. **INVOICES:** Invoices for items ordered, delivered and accepted shall be submitted by the Contractor directly to the payment address shown on the purchase order/contract. All invoices shall show the IFB/RFP number and/or purchase order number.

44. **PRECEDENCE OF TERMS:** In the event there is a conflict between the General Terms and Conditions and any Special Terms and Conditions, the Special Terms and Conditions shall apply.

45. **CHANGES TO THE CONTRACT:** There shall be no extra work allowed on the contract without prior written authorization in the form of a change order signed by the Purchasing Director or the County Administrator. No officer, agent or employee of the County is authorized to give verbal instructions to increase the Scope of Work and the contractor shall not use verbal instructions as the basis for additional costs. Changes can be made to the contract in any of the following ways by the issuance of a Change Order:

a. The parties may agree to modify the scope of the contract. An increase or decrease in the price of the contract resulting from such modification shall be agreed to by the parties as a part of their written agreement to modify the scope of the contract.

b. James City County may order changes within the general scope of the contract at any time by written notice to the Contractor. Changes within the scope of the contract include, but are not limited to, things such as services to be performed, the method of packing or shipment, and the place of delivery or installation. The Contractor shall comply with the notice upon receipt. The Contractor shall be compensated for any additional costs incurred as the result of such order and shall give the County a credit for any savings. Said compensation shall be determined by one of the following methods.

- 1) By mutual agreement between the parties in writing; or
- 2) By agreeing upon a unit price or using a unit price set forth in the contract, if the work to be done can be expressed in units, and the contractor accounts for the number of units of work performed, subject to the County's right to audit the Contractor's records and/or determine the correct number of units independently; or
- 3) By ordering the Contractor to proceed with the work and keep a record of all costs incurred and savings realized. A markup for overhead and profit may be allowed if provided by the contract. The same markup shall be used for determining a decrease in price as the result of savings realized. The Contractor shall present the County with all vouchers and records of expenses incurred and savings realized. The County shall have the right to audit the records of the Contractor as it deems necessary to determine costs or savings. Any claim for an adjustment in price under this provision must be asserted by written notice to the Purchasing Office within thirty (30) days from the date of receipt of the written order from the Purchasing Office. If the parties fail to agree on an amount of adjustment, the questions of an increase or decrease in the contract price or time for performance shall be resolved in accordance with the procedures for relieving disputes provided by the Disputes Clause of the contract.

Neither the existence of a claim nor a dispute resolution process, litigation or any other provision of this contract shall excuse the Contractor from promptly complying with the changes ordered by the County or with the performance of the contract generally.

- c. No modification for a fixed price contract may be increased by more than 25% or \$50,000, whichever is greater, without the advanced written approval of the Board of Supervisors.

46. **AUTHORIZATION TO TRANSACT BUSINESS, STATE REGISTRATION OF CONTRACTORS (IF APPLICABLE) AND COUNTY BUSINESS LICENSE:** A contractor organized as a stock or nonstock corporation, limited liability company, business trust, or limited partnership or registered as a registered limited liability partnership shall be authorized to transact business in the Commonwealth as a domestic or foreign business entity if so required by Title 13.1 or Title 50 or as otherwise required by law.

Pursuant to competitive sealed bidding or competitive negotiation, all bidders or offerors organized or authorized to transact business in the Commonwealth pursuant to Title 13.1 or Title 50 are required to include in its bid or proposal the identification number issued to it by the State Corporation Commission. Any bidder or offeror that is not required to be authorized to transact business in the Commonwealth as a foreign business entity under Title 13.1 or Title 50 or as otherwise required by law shall include in its bid or proposal a statement describing why the bidder or offeror is not required to be so authorized.

Attention is directed to Chapter 11, title 54.1 of the Code of Virginia (Re: State registration of contractors), which requires that all bidders must show evidence of the proper license under the provision of this chapter before such bid is considered.

All firms doing business in James City County are required to be licensed in accordance with the County's "Business, Professional, and Occupational Licensing (BPOL) Tax" Ordinance. Wholesale and retail merchants without a business location in James City County are exempt from this requirement. Questions concerning the BPOL Tax should be directed to the Business License Inspector, telephone (757) 253-6698.

47. **PROPRIETARY INFORMATION:** Section 2.2-4342F of the Code of Virginia states: "Trade secrets of proprietary information submitted by a bidder, offeror, or contractor in connection with a procurement transaction shall not be subject to public disclosure under the Virginia Freedom of Information Act; however, the bidder, offeror, or contractor must invoke the protections of this section prior to or upon submission of the data or other materials, and must identify the data or other materials to be protected and state the reasons why protection is necessary." Declaring an entire bid or proposal response as proprietary is unacceptable.

48. **INDEMNIFICATION:** The Contractor hereby binds himself and his successors to indemnify, defend, and save harmless James City County, its officers, agents or employees, from all suits and actions of every name and description brought against it or them, and all costs or damages to which it or they may be put, on account of, or by reason of any injury or alleged injury to the person or property of another, resulting from or on account of the negligent acts, errors or omissions, recklessness or intentionally wrongful conduct of the Contractor or his agents in the performance of the contract; and that the whole or so much of the moneys due to the contractor under and by virtue of this Contract, as such or may be considered necessary by the County, shall and may be retained until all such suits and claims for damages as aforesaid shall have been settled, and evidence to that effect furnished to the satisfaction of the County. The said Contractor further agrees to indemnify and save harmless James City County against any and all claims, suits or demands that may accrue to, be suffered by, or adjudicated against it by reason of any injury sustained by any of the Contractor's employees in and about the said work, under and pursuant to the provisions of the Workman's Compensation Law or any amendments thereto, and the Contractor shall produce certificates or other satisfactory evidence of ample protection against such liability.

49. **NOTICE OF REQUIRED DISABILITY LEGISLATION:** The County government is required to comply with State and Federal disability legislation: The Rehabilitation Act of 1973 Section 504, The Americans with Disabilities Act (ADA) of 1990 Title II and the Virginia with Disabilities Act of 1990. Specifically, the County, may not, through its contractual and/or financial arrangements, directly or indirectly avoid compliance with Title II or the Americans with Disabilities Act, Public Law 101-336, which prohibits discrimination by public entities on the basis of disability. Subtitle A protects qualified individuals with disability from discrimination on the basis of disability in the services, programs, or activities of all State and local governments. It extends the prohibition of discrimination in federally assisted programs established by the Rehabilitation Act of 1973 Section 504 to all activities of State and local governments, including those that do not receive Federal financial assistance, and incorporates specific prohibitions of discrimination on the basis of disability in Titles I, III, and V of the Americans with Disabilities Act. The Virginians with Disabilities Act of 1990 follows the Rehabilitation Act of 1973 Section 504.

50. **DRUG-FREE WORKPLACE:** During the performance of this contract, the contractor agrees to (i) provide a drug-free workplace for the contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the contractor that the contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

For the purposes of this section, "*drug-free workplace*" means a site for the performance of work done in connection with a specific contract awarded to a contractor, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the contract.

51. **Non-Responsive Performance:**

Delivery Delays: James City County reserves the right to procure goods and/or services to be provided under this contract from other sources in the event Successful Bidder fails to deliver such goods and/or service deliverables in accordance with delivery dates and time frames set forth in this contract. **Unacceptable Deliveries (Rejections):** Upon notification by James City County that goods and/or service deliverables provided by the Successful Bidder under this contract are damaged and/or not of the quality specified by James City County, such goods and/or service deliverables will be rejected. Successful Bidder shall replace such rejected goods and/or service deliverables immediately or within a reasonable time as determined by James City County. Successful Bidder shall remove all rejected materials, equipment or supplies from the premises of James City County within ten (10) days of notification. Rejected goods and/or service deliverables not removed from James City County premises within ten (10) days will be regarded as abandoned, shall become the property of James City County, and James City County shall have the right to dispose of such items. **James City County Purchase From Alternate Sources:** James City County reserves the right to authorize immediate purchase from other sources against delayed deliveries and/or rejections. The Successful Bidder shall reimburse James City County promptly for excess costs incurred by James City County for such purchases. Any such purchases will be deducted from the contract amount. In the event James City County cost of obtaining goods and/or service deliverables from other sources be less, Successful Bidder shall have no claim to the difference. **Liability:** Successful Bidder shall be liable to James City County for all costs incurred by James City County as a result of Successful Bidder's failure to perform in accordance with the contract. Successful Bidder's liability shall include, but not be

limited to: Damages and other delay costs, to include costs to procure goods/services from alternate suppliers. Increased costs of performance, such as extended overhead and increased performance costs resulting from performance delays caused by Successful Bidder and/or rejections of Successful Bidder's goods and/or service deliverables. Warranty and rework costs, liability to third party, excess costs, attorney's fees and related costs incurred by James City County due to non-responsive performance of Successful Bidder.

52. **BREACH OF CONTRACT:** Successful Bidder shall be deemed in breach of this contract if the Successful Bidder: Fails to comply with any terms of this contract; Fails to cure such noncompliance within five (5) calendar days from the date of the Owner written notice or such other time frame, greater than five (5) calendar days, specified by the JCC Contract Administrator in the notice. Successful Bidder fails to submit a written response to the Owner notification of noncompliance within five (5) calendar days after the date of the Owner notice. All notices under this contract shall be submitted, either by fax, email or certified mail, return-receipt requested, to the respective contract administrator. Successful Bidder shall not be in breach of this contract as long as its default was due to causes beyond the reasonable control of and occurred without any fault or negligence on the part of both the Successful Bidder and its sub-contractors. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of Owner in its sovereign capacity, fires, floods, epidemics, strikes, freight embargoes, and unusually severe catastrophic weather such as hurricanes.

53. **TERMINATION:** Subject to the provisions below, the contract may be terminated by the County upon thirty (30) days advance written notice to the other party. Upon receipt of a notice of termination, the contractor shall cease all work underway on behalf of the County unless advised by the County to do otherwise. In the event of termination, Contractor shall be compensated only for the services as set forth in the contract provided to the satisfaction of the County and expenses incurred as of the date of termination. Any contract cancellation notice shall not relieve the contractor of the obligation to deliver and/or perform on all outstanding orders issued prior to the effective date of cancellation.

a. **Termination for Convenience:** In the event that the contract is terminated upon request and for the convenience of the County, without the required thirty (30) days advance notice, then the County shall be responsible for payment of services up to the termination date.

b. **Termination for Cause:** Termination by the County for cause, default or negligence on the part of the contractor shall be excluded from the foregoing provision; termination costs, if any shall not apply. However, pursuant to the Default paragraph of these General Conditions, the County may hold the contractor responsible for any resulting additional purchase and administrative costs. Any payment due to the contractor at the time of termination may be adjusted to the extent of any additional costs occasioned to the County by reason of the contractor's default. The thirty (30) days advance notice requirement is waived in the event of Termination for Cause.

c. **Termination Due to Unavailability of Funds in Succeeding Fiscal Years:** When funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal year, the contract shall be canceled.

54. **CONTRACTOR RESPONSIBILITY FOR COUNTY PROPERTY:** The Contractor shall be responsible for damages to County property caused by work performed by itself or its subcontractors. The Contractor shall be responsible for maintaining the area surrounding and adjoining the work site in their current condition. Property damage to surrounding or adjoining areas caused directly or indirectly by actions or omissions of the Contractor

shall be replaced or remedied by the Contractor, to the satisfaction of the County, at the Contractor's expense.

55. **COPYRIGHTS OR PATENT RIGHTS:** The bidder certifies by submission of bid that there has been no violation of copyrights or patent rights in manufacturing, producing, or selling the product or services shipped or ordered as a result of this bid. The successful bidder shall, at his own expense, defend any and all actions or suits charging such infringement, and will save James City County, its officers, employees, and agents harmless from any and all liability, loss, or expense occasioned by any such violation.
56. **DELIVERY:** In the appropriate space, the bidder shall state the time of proposed delivery or project completion in number of calendar days. Unless otherwise specified, calendar days shall be presumed. Unless otherwise specified, quote the earliest delivery possible, as this may be considered a factor in making award. Delivery expressed in calendar days may be given preference over such general terms as "stock immediately," and "as soon as possible." As time will be of the essence for any orders placed as a result of this bid, the County reserves the right to cancel such orders, or any part thereof, without obligation, if delivery is not made at the time(s) specified on bid form.
57. **INDEPENDENT CONTRACTOR:** The contractor shall be legally considered an independent contractor and neither the contractor nor its employees shall, under any circumstances, be considered servants or agents of James City County or James City Service Authority; and the County shall be at no time legally responsible for any negligence or other wrongdoing by the contractor, its servants, or agents. The County shall not withhold from the contract payments to the contractor any federal or state unemployment taxes, federal or state income taxes, Social Security tax, or any other amounts for benefits to the contractor. Further, the County shall not provide to the contractor any insurance coverage or other benefits, including Worker's Compensation, normally provided by the County for its employees.
58. **SUBCONTRACTS:** No portion of the work shall be subcontracted without prior written consent of the Purchasing Director. In the event that the contractor desires to subcontract some part of the work, the contractor shall furnish the Purchasing Director the names, qualifications and experience of the proposed subcontractors. The contractor shall remain fully liable and responsible for the work to be done by its subcontractors and shall assure compliance with all requirements of the contract.
59. **HOLIDAYS:** The Contractor shall receive approval of the County, in advance, of any work to be performed on Holidays. James City Service Authority/James City County observes the following Holidays:

New Year's Day	1 st day of January
Martin Luther King's Birthday	3 rd Monday in January
President's Day	3 rd Monday in February
Memorial Day	Last Monday in May
Independence Day	4 th day in July
Labor Day	1 st Monday in September
Veteran's Day	11 th day in November
Thanksgiving Day	4 th Thursday in November
Day after Thanksgiving	4 th Friday in November
Christmas Eve	24 th day in December
Christmas Day	25 th day of December

DELIVERY PROVISION

60. **SHIPPING INSTRUCTIONS-CONSIGNMENT:** Unless otherwise specified in the solicitation each case, crate, barrel, package, etc., delivered under the contract must be plainly stenciled or securely tagged, stating the Contractor's name, purchase order number, and delivery address as indicated in the order. Where shipping containers are to be used, each container must be marked with the purchase order number, name of the Contractor, the name of the item, the item number, and the quantity contained therein.

Deliveries must be made within the hours of **8:00 a.m. – 3:00 p.m.** Deliveries at any other time will not be accepted unless specific arrangements have been previously made with the designated individual at the delivery point. No deliveries will be accepted on Saturdays, Sundays and holidays unless previous arrangements have been made. It shall be the responsibility of the contractor to insure compliance with these instructions for items that are drop-shipped.

61. **RESPONSIBILITY FOR SUPPLIES TENDERED:** The Contractor shall be responsible for the materials or supplies covered by the contract until they are delivered at the designated point, and a physical inspection is made and material is requested or rejected, but the Contractor shall bear all risk on rejected materials or supplies after notice of rejection. Rejected materials or supplies must be removed by and at the expense of the contractor promptly after notification of rejection, unless public health and safety require immediate destruction or other disposal of rejected delivery. If rejected materials are not removed by the Contractor within ten (10) days after date of notification, the County may return the rejected materials or supplies to the Contractor at his or her risk and expense or dispose of them as its own property.
62. **TESTING AND INSPECTIONS:** James City County reserves the right to conduct any test/inspection it may deem advisable to assure supplies and services conform to the specification. Inspection and acceptance of materials or supplies will be made after delivery at destinations herein specified unless otherwise stated. If inspection is made after delivery at destination herein specified, the County will bear the expense of inspection except for the value of samples used in case of rejection. Final inspection shall be conclusive except in regard to latent defects, fraud or such gross mistakes as to amount to fraud. Final inspection and acceptance or rejection of the materials or supplies will be made as promptly as practicable, but failure to inspect and accept or reject materials or supplies shall not impose liability on the County for such materials or supplies as are not in accordance with the specifications.
63. **COMPLIANCE:** Delivery must be made as ordered and in accordance with the solicitation or as directed by the Purchasing Office when not in conflict with the bid/contract. The decision as to reasonable compliance with delivery terms shall be final. Burden of proof of delay in receipt of goods by the purchaser shall rest with the Contractor. Any request for extension of time of delivery from that specified must be approved by the Purchasing Office, such extension applying only to the particular item or shipment affected. Should the Contractor be delayed by the County, there shall be added to the time of completion a time equal to the period of such delay caused by the County. However, the contractor shall not be entitled to claim damages of extra compensation for such delay or suspension. These conditions may vary for construction contracts.
64. **POINT OF DESTINATION:** All materials shipped to the County must be shipped F.O.B. DESTINATION unless otherwise stated in the contract. The materials must be delivered to the "Ship To" address indicated on the purchase order.
65. **REPLACEMENT:** Materials or components that have been rejected by the Purchasing Office, in accordance with the terms of the contract, shall be replaced by the Contractor at no cost to the County.
66. **PACKING SLIPS OR DELIVERY TICKETS:** All shipments shall be accompanied by Packing Slips or Delivery Tickets and shall contain the following information for each item delivered:
- Purchase Order Number/Contract Number
 - Name of Article and Stock Number,
 - Quantity Ordered,
 - Quantity Shipped,
 - Quantity Back Ordered,
 - The Name of the Contractor.

Contractors are cautioned that failure to comply with these conditions shall be considered sufficient reason for refusal to accept the goods.

67. **SAMPLES:** Evidence in the form of samples may be requested if brand being quoted upon is other than as specified. The County reserves the right to request that such samples be furnished at the time of bid opening. The County also reserves the right to request samples after the date of bid opening. Requested samples must be furnished free of expense to the County and if not used in testing or destroyed, will, upon request, be returned at the bidder's expense.

BIDDER/CONTRACTOR REMEDIES

68. **PROTEST OF AWARD OR DECISION TO AWARD:** Any Bidder/ Offeror who desires to protest the award or decision to award a contract, by James City County shall submit such protest in writing to the County no later than ten (10) days after public notice of the award or announcement of the decision to award, whichever comes first. No protest shall lie for a claim that the selected bidder/Offeror is not a responsible Bidder/Offeror. The written protest shall include the basis for the protest and the relief sought. The Purchasing Director shall issue a decision in writing within ten (10) days stating the reasons for the action taken. This decision shall be final unless the bidder/offeror appeals within ten (10) days of the written decision by instituting legal action. Nothing in this paragraph shall be construed to permit an offeror to challenge the validity of the terms or conditions of the solicitation.

69. **DISPUTES:**
Claims. Written notice of the Contractor to file a claim must be given at the time of the occurrence or beginning of the work upon which the claim is based. Such claims, whether for money or other relief, shall be submitted in writing to the County's Purchasing Director no later than sixty (60) days after final payment. The Purchasing Director shall give written notification of the final decision on such claim to the Contractor within thirty (30) days of the date the claim was received. The Contractor may not institute legal action before receiving the Purchasing Director's final written decision, unless the Purchasing Director fails to render such decision within the specified time. Pendency of claims shall not delay payment of amounts agreed due in the final payment. (Code of Virginia, § 2.2-4363).

Claims Relief. Under certain circumstances beyond the control of the Contractor, such as acts of God, sabotage, and fire or explosion not caused by negligence of the Contractor or its agent, the Purchasing Director may extend the time limit for performance required by this Contract. Any such extension must be issued in writing and signed by the Purchasing Director.